

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

ROOR INTERNATIONAL BV, et al.	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 1:18-cv-03959-SEB-DML
	)	
MUNCIE PETROLEUM INC	)	
d/b/a PHILLIPS FOOD MART, et al.	)	
	)	
Defendants.	)	

**ORDER SUSTAINING IN PART AND OVERRULING IN PART PLAINTIFFS'  
OBJECTION TO THE MAGISTRATE JUDGE'S REPORT AND  
RECOMMENDATION**

On October 24, 2019, Magistrate Judge Debra McVicker Lynch issued a Report and Recommendation ("the R&R") recommending that this action be dismissed without prejudice based on Plaintiffs' failure to comply with the Federal Rules of Civil Procedure and the Court's orders to show cause why their complaint should not be dismissed for two derelictions: first, their failure to prosecute after a Clerk's entry of default was entered against Defendant Muncie Petroleum, Inc. and no motion for default judgment was filed, and second, their failure to serve the complaint on Defendant Amrinderjit Singh within 90 days of its filing. Six days after the issuance of the R&R by the magistrate judge, on October 30, 2019, Plaintiffs filed their Motion for Default Judgment as to Defendant Muncie Petroleum, Inc. The following day, on October 31, 2019, Plaintiffs filed an objection to the R&R [Dkt. 26]. The objection requests that the Court find good cause for their failure(s) based on a miscommunication between local and national counsel,

thereby excusing Plaintiffs' counsel's failure to timely file a motion for default judgment against Defendant Muncie Petroleum, Inc. and to respond to the Court's show cause orders. Plaintiffs do not address the portion of the R&R recommending the dismissal of Defendant Singh. For the reasons detailed below, we SUSTAIN IN PART and OVERRULE IN PART Plaintiffs' objection.

## **I. Legal Standard**

Federal Rule of Civil Procedure 72(b) expressly authorizes a litigant to object to a magistrate judge's report and recommendation on a dispositive motion, but he must do so within fourteen days of service. FED. R. CIV. P. 72(b). The court reviews *de novo* any part of the report and recommendation to which a party has properly objected. *Id.* *De novo* review requires the court to reexamine the matter with a fresh set of eyes and make "an independent judgment of the issues." *Moody v. Amoco Oil Co.*, 734 F.2d 1200, 1210 (7th Cir. 1984). "If no objection or only partial objection is made, the district court judge reviews those unobjected [to] portions for clear error." *Johnson v. Zema Sys. Corp.*, 170 F.3d 734, 739 (7th Cir. 1999).

## **II. Discussion**

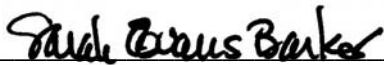
Magistrate Judge McVicker Lynch's recommendation to dismiss Plaintiffs' complaint against Defendant Muncie Petroleum, Inc. was based on Plaintiffs' persistent failure to file a motion for default judgment and to respond to the Court's show cause order. With this prodding, Plaintiffs have now filed their motion for default judgment and counsel has explained that their failure to timely file that motion and to respond to the order to show cause was the result of miscommunication between attorneys. This

suffices as “good cause shown” for Plaintiffs’ untimely filing of their motion for default judgment. Thus, we accept their explanation and hereby SUSTAIN their objection to the portion of the R&R recommending the dismissal of Plaintiffs' complaint against Defendant Muncie Petroleum, Inc. for failure to prosecute and comply with court orders. Plaintiffs' motion for default judgment will be addressed in due course by the Court.

In her R&R, Magistrate Judge McVicker Lynch also recommended that Plaintiffs' complaint against Defendant Singh be dismissed based on Plaintiffs' failure to perfect service as required by Federal Rule of Civil Procedure 4(m). Plaintiffs did not address this portion of the R&R in their objection nor have they shown that they have properly served Defendant Singh. Accordingly, the Court OVERRULES Plaintiffs' objection in this respect and ADOPTS that portion of the R&R. Plaintiffs' complaint against Defendant Singh is hereby DISMISSED WITHOUT PREJUDICE.

IT IS SO ORDERED.

Date: 5/18/2020

  
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SARAH EVANS BARKER, JUDGE  
United States District Court  
Southern District of Indiana

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